

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.

Case No. 3:10-cv-03561-WHA

Plaintiff,

v.

GOOGLE INC.

Defendant.

EXPERT REPORT OF DAVID I. AUGUST, PH.D.
REGARDING THE NON-INFRINGEMENT OF U.S. PATENT NO. 6,910,205

103. For the remaining terms in the Asserted Patents, I have applied the plain meaning of those terms as they would be understood by a person having ordinary skill in the art.

104. If the proposed definitions are not accepted by the Court or if additional claim terms are defined by the Court, I reserve the right to modify my opinion based on the interpretation of the claims given by the Court.

VI. SUMMARY OF THE ACCUSED FUNCTIONALITY

A. Overview of Google's accused products

105. I have been informed that Oracle has identified the following accused products: “(i) ‘Android’ or ‘the Android Platform’ including the Android SDK and Android source code distributed through various git repositories; (ii) Google devices running Android; and (iii) other devices running Android.” (Mitchell Patent Report at ¶ 171.)

106. A number of versions of the Android operating system are accused by Oracle, including version 1.5 (“Cupcake”), 1.6 (“Donut”), 2.0/2.1 (“Eclair”), 2.2 (“Froyo”) and 2.3 (“Gingerbread”). Dr. Mitchell admits that he has not reviewed source code for version 3.0 (“Honeycomb”) or the unreleased version of Android dubbed “Ice Cream Sandwich”. (*Id.* at ¶ 173.) Because Dr. Mitchell focused on Android 2.2 in his report, I do so here as well. But to the extent Dr. Mitchell is permitted to put forward arguments specific to the other versions of Android, I reserve the right to address them in the future.

107. “Android” is defined by Dr. Mitchell as “all versions of Android up to and including version 2.3 (‘Gingerbread’)” unless otherwise specified. (*Id.* at ¶ 173.) “Google devices running Android” is defined by Dr. Mitchell as “the Google Developer Phones, the Google Nexus One, and the Google Nexus S.” (*Id.* at ¶ 172.) “Other mobile devices running Android” is defined by Dr. Mitchell as “HTC’s EVO 4G, HTC’s Droid Incredible, HTC’s G2, Motorola’s Droid, and Samsung’s Captivate.” (*Id.* at ¶ 171.)

108. Note also that while Froyo was shipped on the Nexus One and Gingerbread shipped on the Nexus S, Oracle has not established what portions of the Android operating system is on third party devices. This is an important issue because device manufacturers often modify the source code. (*See* Excerpt of the Transcript of the Deposition of Patrick Brady on July 21, 2011 at 114-129, Exhibit X.)

Executed this 25th day of August, 2011.

I declare that to the best of my knowledge the foregoing is true and correct as to the facts stated and my opinions as expressed.



David I. August, Ph.D.